HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G. BHAVANI PRASAD

WRIT PETITION Nos.17351 of 2004 and 28112 of 2005

Writ Petition No.17351 of 2004

Between:

Dr. Bhagwant Rao …Petitioner

And

Secretary, Ministry of Information
and Broadcasting, Government of India,
New Delhi and three others.

...Respondents

Counsel for the petitioner : Sri K.G. Kannabhiran,
Senior Advocate, assisted by
Sri B. Nalin Kumar.

Counsel for respondent Nos.1 to 3 : Sri A. Rajasekhar Reddy,
Assistant Solicitor General.

Counsel for respondent No.4 : Sri Bhaskar Adiraju

Writ Petition No.28112 of 2005

Between:

G. Srinivasa Rao ...Petitioner

And

The Chief Executive Officer, tv-9 Channel,
Hyderabad and four others.

…Respondents

Counsel for the petitioner : Sri Katragadda Gopal Chowdary, Amicus.

Counsel for respondent Nos.1 and 2: Sri K.S. Murthy

Counsel for respondent No.3 : Sri A. Rajasekhar Reddy, Assistant Solicitor General.

Counsel for respondent Nos.4 and 5: Government Pleader for Home.

: O R D E R :

12th October, 2007

Per G.S.SINGHVI, C.J.

By this order, we are disposing of the above-noted two writ petitions, one of which has been filed Dr. Bhagawant Rao for issue of a direction to Secretary, Ministry of Information and Broadcasting, Government of India, Secretary, Ministry of Home Affairs and Chairman, Telecom Regulatory Authority of India to comprehensively review Direct to Home (DTH) operations and guidelines and to come up with fool proof technological solutions to stop transmission/facilitation in accessing secret/anti-national messaging,

programmes and pornographic channels to DTH subscribers and also to restrain respondent Nos. 1 and 2 from issuing any further clearance to respondent No.4 – M/s ASC Enterprises Limited or any other applicant till adequate safeguards are incorporated in DTH guideline by way of regulatory framework and mechanism and also take action against respondent No.4 for violating the programming code.

The other one is a taken up petition, which was registered as writ petition on the basis of contents of letter dated 20.12.2005 sent by Shri G. Srinivasa Rao of Visakhapatnam highlighting the telecast of programme on "cyber café sex rocket in Vizag" by Tv-9 channel from 04.00 to 06.00 p.m.

In the affidavit filed by him, Dr. Bhagawant Rao has claimed that he is actively associated with former national political parties namely 'Jansangh' and 'Janata Party' and that presently he is a senior member of 'Bharatiya Janata Party'. He also claimed to have worked as President of Yuva Morcha, a youth wing of Janata Party, Hyderabad unit. In paragraphs 7 to 13 of his affidavit, Dr. Bhagawant Rao has highlighted the sudden opening up of DTH services to the private sector and expressed grave apprehension about possible misuse of these services for telecasting anti-national and pornographic programme, which is going to destroy the cultural heritage and social ethos of the Indian society. He has pleaded that due to inadequate and insufficient monitoring mechanism and lack of appropriate legislative measure, the DTH licenses are being given without any restriction. The deponent has then referred to the extracts of report dated 27.11.2002 of the Parliamentary Standing Committee on information and technology and pleaded that despite grave apprehensions expressed by an important body of public representatives, the State has failed to take appropriate legislative

measure and administrative action to ensure that DTH service is not misused against anti-national and social interest. For the sake of convenience, paragraphs 7 to 13 of the affidavit of Dr. Bhagawant Rao are reproduced below:

> " 7. I submit that at present the programmes on the television are being broadcasted and received through cable network and or through antenna i.e. in terrestrial mode. Respondent No.4 has for the first time started DTH service in India sometimes in October/November 2003 apparently after getting a licence from the (Government of India, respondent No.1) DTH service is a method of distribution of TV channels in Ku-band (high frequency) by using a satellite system that provides TV signals directly to subscriber's premises. A subscriber can access all the TV channels (for which he makes payment) directly at his home by using a small dish antenna and a Set-Top-Box (STB), which is a digital decoding device (to download TV channels). It is attached to the viewer's TV set and is connected to a small dish. There is no intermediary such as cable operator, etc. and a subscriber can receive the signals of various channels/programme directly from the satellite.
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> 8. I submit that in the year 2001, the respondent No.1 permitted opening up of DTH services in ku-band to the private sector (which were earlier prohibited in July 1997) by stipulating certain guidelines. No specific law or regulation has been prescribed to regulate and monitor this important sector. Although no regulator was there at that time it is only recently, a regulatory authority i.e. respondent No.3 has been given the responsibility to look after broadcasting services including DTH services as an interim measure although still there is no legislation/law for DTH. A coy of DTH guidelines is annexed herewith as Annexure P-1. It is pertinent to mention here that in broadcasting sector there is only one Act i.e. The Cable Television Networks Regulation Act, 1995 which regulates the distribution/operation of private television channels, through cable.
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> 9. I submit that by way of a device called "Conditional Access Module (CAM) Card" freely available in the grey market in India, pout in the set top box of DTH, the consumer of DTH services

can have access to pornographic channel of some broadcasters operating throughout the world without being getting detected. I submit that in the film magazine Screen dated 9.4.2004 was published a detailed account possibility of DTH gadgets freely delivering porn TV without any check as also the communications transmitted by some terrorist agencies, without any security intercepts. It has also given a detailed account of how DTH operations could be misused. The issue of Screen dated 9.4.2004 is filed as Annexure P-2.

10. I submit that DTH service in India is presently not properly regulated since it is not technically “broadcasting” but only a mode of distribution of TV channels. Thus, by misusing and intercepting DTH service distribution mechanism it is very easy to show/access pornographic channels with virtual impunity.

11. I humbly submit that obviously the guidelines for DTH were framed without consulting/coordinating with technical experts of the field, as a result there is no proper monitoring system. I submit that in the absence of adequate monitoring the service is also prone to potential misuse by terrorists and anti-national elements from security point of view. Further, it is possible to transmit pornographic contents without detection. Continuous bombardment of this type of easily accessible porno contents through DTH directly to the subscriber’s home and in the society is posing a potential threat to our cultural heritage will result in increase in crime rate against women and also will led to the increase of socially undesirable activities like prostitution and other related criminal activities. I submit that in the national newspaper Hindustan Times dated 15.8.2004 an article was published under the caption “And now, Sat Porn’” which gives an account of satellite porn via Direct to Home network. The said news item is annexed as Annexure P-3.

12. I submit that I am extremely disturbed, concerned and aggrieved by the fact that a consumer of DTH service is able to access pornography channels through DTH service/equipment and the respondent Nos. 1 to 3 are totally apathetic about this fact thereby permitting an onslaught on our cultural heritage and social ethos, and systematic degradation & erosion of moral values.

13. I humbly submit that pornography on television through misuse of DTH service is tearing apart the very fabric of our society. Yet the respondent Nos. 1 to 3 are totally unconcerned of its serious impact and are apathetic about the need to control this menace. It is pertinent to mention here the article in Hindustan Times dated 15.8.2004 (Annexure P-3) where it has been reported that Information and Broadcasting officials have confessed that they never foreseen the invasion of porn channels through CAM cards when they opened DTH. I submit that the article captioned 'Sex on TV encourages teenagers into early sex' which appeared in Hindustan Times dated 9.9.2004 sets out the evils of sexually oriented programmes. I am unable to imagine the effect of these channels accidentally accessed by children/teenagers in the backdrop of the above article which is an extract of a research report from University of North Corolina. The newspaper clipping is annexed as Annexure P-4. Thus the opening up of DTH service without adequate safeguards poses a greater threat to cultural heritage of our society. It has been found that even brief exposure to various forms of pornography can lead to anti-social attitudes and socially destructive behaviour in younger males and as a result the male viewers tend to be more aggressive toward women. This has resulted in increased sexual crime against women including rape in India. Psychologists world over have found that pornography (especially violent pornography can produce an array of undesirable effect such as rape and sexual coercion. Specifically such exposure can lead to increased use of coercion or rape, increased fantasies about sex and rape. There are number of compelling statistics that suggest that pornography does have profound and devastating social consequences. A proven direct correlation exists between pornography and crimes of rapes, prostitution, child abuse and also physical abuse of spouse which destroys marriage, families &individual lives."

In the counter-affidavit dated 25.04.2005 filed by him, Shri D. Prasad Rao, Director, Doordarshan Kendra, Hyderabad has averred that in compliance of the direction given by

Delhi High Court in the writ petition filed by Dr. N. Bhaskar Rao, Chairman, Centre for Media Studies, New Delhi, Ministry of Information and Broadcasting has ensured that respondent No.4 had adhered to the conditions of the licence given to it for providing DTH services and that no pornographic channel is available at ku-band. It has been further averred that inter-ministerial group has been set up to examine security concerns. Copies of the minutes of the meetings of the committee constituted by the Ministry in furtherance of the direction given by Delhi High Court have already been filed with the affidavit of Shri D. Prasad Rao. Paragraphs 6 to 8 and 10 of the affidavit of Shri Prasad Rao, which contain details of the action already taken by the Government of India, Ministry of Information are read as under:

> " 6. In reply to para 8, it is submitted that it is not correct to state that no specific regulation has been prescribed to regulate and monitor the DTH service. As per the terms and conditions of the DTH licence agreement for operation of DTH broadcasting service, the licensee is required to ensure adherence to the programme and advertisement code as laid down by the Ministry of Information and Broadcasting. It has further been provided that the licensee shall ensure that its facilities are not used for transmission of any objectionable or obscene content messages or communication inconsistent with the laws of India. Further, the use of the facility or service for anti-national activities would be construed as an offence punishable under the Indian Penal Code and other applicable laws and would attract immediate termination of licence. Besides, the Ministry of Information and Broadcasting reserves the right to prohibit the transmission or reception of programmes in the interest of national security or in the event of emergency and/or similar type of situation. Adequate safeguards have been provided in the DTH licence agreement which are spread over in various Articles viz. Articles 5,6,8,9, 15, 20 and 21.
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> 7. In reply to para 9, it is submitted that a DTH subscriber cannot receive the broadcast signal of pornographic-nature in C Band frequency as it would require a larger size dish. As per

available information, some pornographic channels are available in C Band in India but no such channel is available in KU band frequency. Therefore, a DTH service provider cannot receive pornographic channels unless he decides to install a large size C Band receive dish.

8. In reply to para 10, it is incorrect to state that no specific regulation has been prescribed to regulate and monitor the DTH service. As per the terms and conditions of the DTH licence agreement for operation of DTH broadcasting service, the licensee is required to ensure adherence to the programme and advertisement codes as laid down by the Ministry of Information and Broadcasting. It has further been provided that the licensee shall ensure that its facilities are not used to transmission of any objectionable or obscene content messages or communication inconsistent with the laws of India. Further, the use of the facility or service for anti-national activities would be construed as an offence punishable under the Indian Penal Code and other applicable laws and would attract immediate termination of the license. Besides, the Ministry of I&B reserves the right to prohibit the transmission of reception of programmes in the interest of national security or in the event of emergency and/or similar type of situation. Adequate safeguards have been provided in the DTH licence agreement which are spread over in various Articles viz. Articles 5,6,8,9,15, 20 and 21.

10. In reply to para 12, it is submitted that the contentions raised in the para already explained in paras No.4 & 8, as such need no further reply by this respondent."

In the additional affidavit dated 15.11.2005, Shri D. Prasad Rao has averred that respondent No.4 has given an undertaking and the schedule to the licence agreement entered with the said respondent has been accordingly modified so as to ensure that consumers do not have access to any pornographic or secret/anti-national messaging. A copy of order dated 01.06.2005 issued by the Government of India has already been placed on record. That order reads as under:

"No.8/3/2004-BP&L
Government of India

Ministry of Information & Broadcasting

New Delhi, dated the 1st June, 2005.

O R D E R

The Government of India hereby decides that the following shall be added as Clauses 1.7, 5.2, 6.5 and 6.6 to the "Schedule to the License Agreement" for DTH services.

"1.7 : Any change in the equity structure of the Licensee Company as well as amendment to shareholders agreement, wherever applicable, shall only be carried out in consultation and with prior approval of Licensor."

"5.2 : The Licensee shall invariably ensure that the subscribers of the service do not have access to any pornographic channel or to secret/anti-national messaging and the like. If the licensee fails to do so, the License shall stand cancelled."

"6.5 : The licensee shall not carry the signals of a broadcaster against whom any regulatory body, tribunal or court have found the following

(i) refused access on a non-discriminatory basis to another DTH operator contrary to the Regulations of TRAI

(ii) violated the provisions of any law relating to competition including the Competition Act."

"6.6 : The licensee shall not enter into any exclusive contract distribution of TV chanels."

" [**Explanation**: It shall be the sole responsibility of the licensee to ascertain before carrying its signals on its platform whether any broadcaster (s) has been found to be in violation of the above conditions or not. In respect of TV channels already being carried on the platform, the licensee shall ascertain from every source including the licensor, TRAI, Tribunal or a court, whether concerned broadcasters or the channels is in violation of the above conditions. If any violation so comes to its notice, the licensee shall forthwith discontinue to carry the channels of the said broadcaster]"

The above provisions would come into effect immediately and would also be applicable in respect of license agreements already executed.

Sd/-xxxxx
(R. Parasuram)
Joint Secretary to the Government of India."

In a separate affidavit filed by him, Shri Ravi Bhushan Puri, Senior Manger (Broadcast Operation) of respondent No.4 has highlighted the advantages of DTH services and has averred that

respondent No.4 has not violated the conditions of licence or the guidelines issued by the Government of India. According to Shri Ravi Bhushan, the licensee cannot check the unauthorized access made by the subscriber of DTH to pornographic channel or channels telecasting anti-national programmes.

In the second writ petition, the official respondents have placed on record letter dated 19.01.2006 sent by Under Secretary, Ministry of Information and Broadcasting which contains a mention of order dated 24.04.2005 issued by the Government of India under Section 22 of the Cable Television Networks (Regulation) Act, 1995 and it has been suggested that no person can downlink a channel which has not been registered with the Ministry of Information and Broadcasting in accordance with the guidelines issued for certification of films prescribed under the Cinematograph Act, 1952. A copy of the policy guidelines dated 11.11.2005 issued by the Government of India, Ministry of Information and Broadcasting for downlinking of television channels has been annexed with the letter of the Under Secretary. Thereafter, Shri K. Gopal Chowdary, one of the learned Amicus placed on record the following documents:

1) Copy of letter dated 03.01.2006 addressed by him to Shri Ravi Prakash, Chief Executive Officer, Tv-9 Channel;
2) VCDs containing the broadcasted clip of programmes “cyber sex racket in Vizag” and “Young Tarang”;
3) Copy of letter dated 25.12.2006 sent by respondent No.2 to the Director General of Police for keeping a check on the visitors to the cyber cafes; and
4) Copy of order dated 11.01.2006 issued by Commissioner of Police and Additional District Magistrate, Visakhapatnam under Section 133 CrPC.

In the counter filed on behalf of respondent No.3 i.e. Government of India, Ministry of Information and Broadcasting, reference has been

made to the committee constituted by the Government of India vide order dated 25.04.1995. In paragraphs 4 to 8 of supplementary affidavit dated 20.04.2006 filed by him, Shri G.R. Raghavender, Under Secretary, Ministry of Information & Broadcasting has averred as under:

> " 4. In reply to para 13, it is submitted that TRAI has submitted its recommendations on the issues relating to the Broadcasting and distribution of TV channels on 01.10.2004 which are under examination of the Government and no final decision has been taken so far.
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> 5. In reply to para 15 & 16, it is submitted that the Inter-ministerial Committee under Section 20 of the Act to look into the violation of the programme Code and Advertising Code is effectively and constantly monitoring compliance with the Programme and Advertising Coe and enforcing compliance. An illustrative action taken list during 2004-2006 are as follows:
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> **YEAR 2004**
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> Order issued for prohibiting transmission/retransmission of 'REN TV' Channel through cable network with immediate effect until further orders.
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> **YEAR 2005:**
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> (i) Order issued for prohibiting transmission/retransmission of Cine World Channel for 30 days through cable network.
>
> (ii) Orders issued for prohibiting transmission/retransmission of BlueKiss, BlueKiss Express, BlueKiss Promo, TBL-XXX and Free-X TV channels with immediate effect until further orders through cable network.
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> (iii) Final orders issued to India TV News Channel, NDTV India, Sahara TV, Star One Channel for violation of programme Code and Advertising Code.
>
> (iv) Show cause notices issued to 31 channels for telecasting advertisements in violation of Advertising Code etc.
>
> **YEAR 2006:**
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> Final orders issued to 8 music channels with a direction not to telecast certain songs deemed to be in violation of the Code and to run a scroll 'Ministry of Information & Broadcasting issues a warning to the violating channel for violating Programme Code'

and to send the CD as the proof of compliance of carrying out the warning.

6. In reply to para No.26, on the question whether the uplinking and transmission of a video recording over cable network would amount to a public exhibition, it is submitted that as per the Cinematograph Act, 1952, "Cinematograph" includes any apparatus for the representation of moving pictures of series of pictures. Rule 6(1)(n) of Programme Code provides that "No programme should be carried in the cable service which contravenes the provisions of the Cinematograph Act, 1952.

7. In reply to para No.27, as regards whether the provisions of the Cinematograph Act were ever intended to be applied to the television broadcast, it is submitted that the Cinematograph Act came into being in 1952, when the TV broadcasting did not exist and TV channels had not started beaming into the country. It was further amended in 1983 when only Doordarshan was available. However, attention is drawn to Rule 6(1)(n) of the Cable Television Networks Rules, 1994.

8. In reply to para 28(d), it is submitted that the power to issue such guidelines clearly flows from Section 4 of the Telegraph Act in as much as the uplinking and the downlinking of signals involves the establishment, maintenance and working of telegraphs. In terms of Section 4 of the Telegraph Act, the Government of India has the exclusive privilege of establishing, maintaining and working of telegraphs. Section 4 of the Telegraph Act also provides that the Government of India may grant a licence for the establishment, maintenance and working of telegraphs subject to such terms and conditions as deemed fit. It is submitted that the downlinking guidelines draw strength from Section 4 of the Telegraph Act."

Shri K.G. Kannabiran and Shri K. Gopal Chowdary, learned Amicus made detailed submissions on the dire necessity of enacting a suitable legislation to check the menace of programmes which are being made available to the subscribers through DTH services and other cable networks and submitted that unless the Central Government is compelled to bring about a comprehensive legislation

and lay down a clear, effective and transparent mechanism for redressal of the public grievance, the nation may face threat from anti-national elements and there will be a total devaluation of the social and moral values and the generations to come would suffer.

Shri A. Rajashekar Reddy, learned Assistant Solicitor General submitted that Ministry of Information and Broadcasting is actively considering the recommendations made by the Parliamentary Standing Committee as also the suggestions given by the committee of officers constituted vide order dated 25.04.2005 and submitted that the Court may not issue mandamus for enactment of a particular legislation.

We have given our most anxious consideration to the entire matter. The concern expressed by the petitioners of the two cases which is reflected in the report of the Parliamentary Standing Committee as also the learned Amicus who devoted their valuable time to assist the Court are substantive and unless they are addressed by the concerned governmental agencies and authorities, the threat to national security is looming rich large. Equally dangerous are the trends evident from the unchecked broadcasting/telecasting of various programmes, which are viewed by people belonging to all ages. At one stage, we thought of accepting the suggestion of the learned Amicus to issue a mandamus to the Central Government to bring about a comprehensive legislation on the subject, but keeping in view the well recognized rule that the Court should not readily step into the domain of the legislature, we do not consider it proper to pronounce on the negligence or culpability of the Central Government in not bring about comprehensive legislation on the subject and feel that ends of justice will be met by disposing of the writ petitions with an observation that the Central Government should immediately consider the

desirability of bringing about a suitable legislation to check the unregulated growth of cable network and broadcasting/ telecasting of programmes which are injurious to national and public interest. Ordered accordingly.

It is also expected that such legislation would ensure establishment of a regulatory mechanism and a forum where the people can seek redressal of their grievance against the broadcast and telecast of unwarranted programmes.

G.S. SINGHVI, C.J.

12TH October, 2007

G. BHAVANI PRASAD, J.

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